proper scope and duration of the initial traffic stop, and (3) after Trooper Varoni concluded his questioning, defendant voluntarily consented to the search of the vehicle.

Petitioner now brings this petition for writ of certiorari.

SUMMARY OF ARGUMENT

Petitioner asks this Court to grant his petition for writ of certiorari, claiming that this case will enable this Court to address the split of authority in the federal Circuit Courts of Appeal on the issue whether an officer may prolong a traffic stop on a basis unrelated to the stop without particularized suspicion for doing so. This case does not require the resolution of the issue.

Although there may be a split of authority on that issue, there is agreement among the Circuit Courts of Appeal that a trooper may ask questions that are related to the reason for the initial stop. Here, in reinstating petitioner's conviction, the Michigan Supreme Court held that the trooper's follow-up questions, including those about petitioner's destination, his luggage, and whether he had been in trouble before, "did not exceed the proper scope" of the initial traffic stop. On this basis, the Court found that the trooper's conduct was reasonable. Consequently, the Court did not reach the question about whether the trooper could have prolonged the detention for reasons unrelated to the purpose of the traffic stop.

Moreover, there is a second, independent basis on which to uphold the search that the Michigan Court of Appeals did not address, although briefed, and that the Michigan Supreme Court did not reach. There was no causal nexus between the claim of a prolonged, unlawful detention and the consent that petitioner gave for the search of the vehicle, which then led to the search warrant executed on the trunk. For this additional reason, the evidence seized was admissible.

As a result, this case does not provide a test case to examine the split of authority that petitioner has identified because the Michigan Supreme Court did not reach this issue in adjudicating the case.

ARGUMENT

I. The Michigan Supreme Court properly concluded that the trooper acted reasonably in asking these follow up questions where it found they were related to the original purpose of the traffic stop. This Court need not reach the issue that divides the Circuit Courts of Appeal.

The Fourth Amendment provides that a person has a right to be free from unreasonable searches and seizures.[6] Under Michigan law, the police may make a traffic stop on a person based on probable cause where an officer observes a traffic violation.[7] For the purposes of the Fourth Amendment, a traffic stop is a seizure.[8] Moreover, a traffic stop is more analogous to an investigative detention than a custodial arrest and, therefore, may be analyzed under the standard articulated in *Terry v Ohio*.[9]

Under *Terry*, there is a two-pronged test to determine whether an action comports with the Fourth Amendment: First, the officer's action must be justified at its inception. Second, the action must be reasonably related in scope to the circumstances which justified the interference in the first place.[10]

More recently, in *Ohio v Robinette*,[11] this Court evaluated a case under factual circumstances similar to this one. In *Robinette*, this Court examined a traffic stop conducted

---

[6] See *Mapp v Ohio*, 367 US 643, 655; 81 SCt 1684; 6 LEd2d 1081 (1961).
[7] See *People v Kazmierczak*, 461 Mich 411, 421, n 8; 605 NW2d 667 (2000).
[8] *Delaware v Prouse*, 440 US 648, 653; 99 SCt 1391; 59 LEd2d 660 (1979).
[9] *Terry v Ohio*, 392 US 1; 88 SCt 1868; 20 LEd2d 889 (1968). See *Berkemer v McCarty*, 468 US 420, 439; 104 SCt 3138; 82 LEd2d 317 (1984).
[10] *Terry*, 392 US at 20.
[11] *Ohio v Robinette*, 519 US 33; 117 SCt 417; 136 LEd2d 347 (1996).

by an Ohio police officer in which the officer stopped the defendant for speeding. Based on the stop, the officer obtained the defendant's license and ran a computer check on it, which indicated that the defendant had no prior violations. The officer then asked the defendant to step out of the car, turned on his mounted video camera, gave him a verbal warning, and returned him his license. At this point, the officer asked the defendant "before you get gone: Are you carrying any illegal contraband in your car?" The defendant answered no and then the officer asked for consent to search the car and obtained it. Consistent with the consent search, the officer found a small amount of marijuana in the car.[12]

In finding that the consent search was illegal, the Ohio Supreme Court had found that the traffic detention had been prolonged without any particularized suspicion[13]:

> When the motivation behind a police officer's continued detention of a person stopped for a traffic violation is not related to the purpose of the original, constitutional stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some separate illegal activity justifying an extension of the detention, the continued detention constitutes an illegal seizure.

The Ohio Supreme Court then concluded that because the officer had determined that he was not going to give the defendant a ticket at the time that he asked him to get out of the car that the detention became unlawful.[14]

This Court rejected this analysis, noting that the subjective intentions of the officer were irrelevant because the

---

[12] *Robinette*, 519 US at 36.
[13] *Robinette*, 519 US at 37-38.
[14] *Robinette*, 519 US at 38.

test for a seizure's constitutionality was whether the circumstances, viewed objectively, justified the action.[15] This Court noted that consistent with the probable cause to stop the defendant for speeding, the officer was justified in asking the defendant to step from the vehicle.[16]

This Court then examined the primary holding of the Ohio Supreme Court – that is, that the police must specifically inform a person that the person is free to leave after a valid traffic stop before attempting to engage in consensual interrogation.[17] In rejecting this bright line rule, this Court stated that the "touchstone" of the Fourth Amendment's analysis is reasonableness, and that reasonableness is measured by examining the totality of the circumstances.[18] The question whether the defendant understood that he had a right to refuse to give consent to the search was merely one factor to consider within the totality of the circumstances.

1. The Michigan Supreme Court properly concluded that the trooper's questions here were reasonably related to the original purpose of the traffic stop. There was no constitutional violation.

The federal appellate courts are agreed in recognizing the authority of a police officer to ask questions related to the

---

[15] *Robinette*, 519 US at 38, citing *Whren v United States*, 517 US 806, 813; 116 SCt 1769; 135 LEd2d 89 (1996).

[16] *Robinette*, 519 US at 38-39, citing *Pennsylvania v Mimms*, 434 US 106; 98 SCt 330; 54 LEd2d 331 (1977) ("We hold . . . that once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures").

[17] *Robinette*, 519 US at 36.

[18] *Robinette*, 519 US at 39.

driver's travel plans during a traffic stop.[19] Indeed, the Eighth Circuit Court of Appeals in *United States v $404,905.00 in U.S. Currency*[20] recognized that the question whether the police might search the vehicle is one that is related to the original purpose of the stop:

> [H]aving made a valid traffic stop, the police officer may detain the offending motorist while the officer completes a number of routine but somewhat time-consuming tasks related to the traffic violation, such as computerized checks of the vehicle's registration and the driver's license and criminal history, and the writing up of a citation or warning. *During this process, the officer may ask the motorist routine questions such as his destination, the purpose of the trip, or whether the officer may search the vehicle,* and he may act on whatever information is volunteered. [Emphasis added.]

In other words, the federal appellate courts that require that questions be related to the original basis for the traffic stop hold that a police officer, during the traffic stop, might ask questions about the driver's travel plans, destination, and purpose for the trip and even ask for consent to search.

---

[19] See *United States v Hill*, 195 F3d 258, 268 (CA 6, 1999) ("[The traffic officer's] questioning of [the driver] as to his moving plans at the outset of the stop was reasonable in that the questions related to [the driver's] purpose for traveling"); *United States v Ramos*, 42 F3d 1160, 1163 (CA 8, 1994) ("A reasonable investigation of a traffic stop include asking for the driver's license and registration, requesting the driver to sit in the patrol car, and asking the driver about his destination and purpose"); and *United States v Williams*, 271 F3d 1262 (CA 10, 2001) ("When directly confronted with the issue, we have repeatedly held (as have other circuits) that questions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop").

[20] *United States v $404,905.00 in U.S. Currency*, 182 F3d 643, 647 (CA 8, 1999).

This was the situation here. The trooper asked petitioner where he was going and petitioner answered that he was visiting friends and staying at the Holiday Inn in Cheboygan. The question was entirely appropriate. Based on petitioner's strange answer and on the fact that petitioner had no luggage, the trooper asked him to step from the vehicle. Under *Robinette*, the trooper was justified in asking him to step from the vehicle based on the traffic stop alone.[21]

At this point, in response to the trooper's questions, petitioner explained that he had come from Detroit and was staying for two days with friends but he had brought no clothing. This is a second strange answer – the claim that petitioner was going to stay somewhere for two days but did not bring a change of clothing is implausible. Consequently, the trooper then asked follow-up questions to the ones he had asked about defendant's travel plans. The Eighth Circuit in *United States v Ramos*[22] has recognized that where a person gives "inconsistent" answers to a police officers routine questions, this may give rise to suspicion that would justify further probing questions:

> If reasonably related questions raise inconsistent answers, or if the licenses and registration do not check out, a trooper's suspicions may be raised so as to enable him to expand the scope of the stop and ask additional, more intrusive, questions.

In this way, the court recognized that a police officer might reasonably ask questions that relate to the inconsistencies in the driver's answers. This is a common sense principle.

---

[21] See *Robinette*, 519 US at 38-39.

[22] *United States v Ramos*, 42 F3d 1160, 1163 (CA 8, 1994).

In this case, the Michigan Supreme Court reached the same conclusion on these facts. The Court recognized the general federal constitutional test that a police officer may "ask reasonable questions in order to obtain additional information about the underlying offense and the circumstances leading to its commission."[23] The touchstone of the Fourth Amendment is reasonableness.[24]

The Michigan Court then concluded that the reasonable standard from *Robinette* had been met[25]:

> That standard was satisfied here. Trooper Varoni introduced himself to defendant, explained the purpose of the stop, and obtained the necessary identification and paperwork in order to complete the citation for the civil infraction of speeding. In response to a routine question about his travel plans, defendant provided Trooper Varoni with an explanation that was implausible. Therefore, *even before Trooper Varoni could resolve the matter of defendant's violation of the traffic laws*, he was presented with additional suspicious circumstances that warranted further investigation. [Emphasis added.]

The finding that the purpose of the original traffic stop was not completed is supported by the record. Despite the trooper's answers that suggested that the speeding matter was completed at the time that he received petitioner's license, proof of insurance, and registration, Trooper Varoni's

---

[23] *Williams*, 472 Mich at 316, citing, among other cases, *Hill*, 195 F3d at 168; and *Williams*, 271 F3d 1267.

[24] *Robinette*, 519 US at 39.

[25] *Williams*, 472 Mich at 317 (footnote omitted).

subjective statements are not controlling.[26] The purpose for the stop was objectively not over. Trooper Varoni had not given the petitioner a citation or even made a determination whether he was going to give him one.

In fact, the record makes clear that the trooper had not even returned to his vehicle to verify petitioner's driving record on the law enforcement information network (LEIN) to determine whether to give him a citation for 18 mph over the speed limit, or 15 over, or 10 over, or even a warning. Rather, the trooper's candid assessment was that he was detaining them until he could make "a determination what [he] was going to do."

Moreover, the Michigan Court's findings that the trooper asked reasonable follow-up questions and responded to additional suspicious circumstances are also supported by the record. After asking petitioner whether he had been in trouble and whether he had been arrested, the trooper then asked the other occupants questions about their travel plans to see if their stories matched. These were follow-up questions to petitioner's original dishonest, evasive answers.

Once Trooper Varoni received further inconsistent answers about their plans – Keithen King did not know their plans and Sherrie Williams said they were only shopping – Trooper Varoni then returned to petitioner, confronted him with these inconsistencies, and asked him for consent to search the car. Petitioner then voluntarily gave his consent. The entire episode lasted less than 10 minutes. Trooper Varoni then finally issued petitioner a citation after the search – he wrote him up for 88 mph in the 70 mph zone and for the two felonies. The citation form itself includes a felony as a type of possible offenses.

---

[26] See *Robinette*, 519 US at 38 ("Deputy Newsome was objectively justified in asking Robinette to get out of the car, subjective thoughts notwithstanding").

The Michigan Supreme Court rightly found that the follow-up questions were reasonably related to the original purpose of the traffic stop. There is no reason for this Court to revisit the State court's findings.[27] This Court should deny petitioner's request for a writ.

2. Because an officer can ask for consent at any time during a traffic stop, there was no causal nexus between the alleged prolonged detention and the granting of consent, or, for that matter, the obtaining of the search warrant to search the trunk.

Because there was no causal nexus between petitioner's grant of consent to search the car and the allegedly unreasonable detention, any claim that the investigative detention was improper is irrelevant. Respondent raised this argument in its brief in the Michigan Court of Appeals, but that court elected not to address the argument in its written opinion. The Michigan Supreme Court did not need to reach this issue.

Under federal law, there must be a relationship between the violation of the Fourth Amendment and the seizure of the evidence to warrant the sanction of suppression.[28]

---

[27] See *Hernandez v New York*, 500 US 352, 366; 111 SCt 1859; 114 LEd2d 395 (1991) ("The reasons justifying a deferential standard of review in other contexts, however, apply with equal force to our review of a state trial court's findings of fact made in connection with a federal constitutional claim. Our cases have indicated that, in the absence of exceptional circumstances, we would defer to state-court factual findings, even when those findings relate to a constitutional issue").

[28] See *Brown v Illinois*, 422 US 590, 603; 45 LEd2d 416; 95 SCt 2254 (1975) (examining the causal connection between an illegal detention and the admissibility of a defendant's subsequent statement). See also *Wong Sun v United States*, 371 US 471; 83 SCt 407; 9 LEd2d 441 (1963).

Here, there was no dispute that the original traffic stop was proper. Also, there is no requirement for the police to have any suspicion at all to ask for consent to search. If the questions regarding petitioner's prior trouble with the police were somehow improper, they only served to prolong the detention by a few minutes. Petitioner does not dispute the point that he gave consent here. Rather, he claimed that this consent was the product of the illegal detention

But petitioner later effectively refused consent when Trooper Varoni asked to search the trunk after the dog indicated positive for drugs in the car but the search of the interior revealed no drugs, which undermines his claim that he only gave consent to the search of the interior because of the detention. The fact of the later refusal illustrates that there was no nexus between the detention and the consent, because if a short detention caused petitioner to accede to a search, the search of the interior would have only further pressured him to give consent for the trunk. Instead, petitioner's counsel admitted in argument at the evidentiary hearing that the real reason he gave consent was that he did not anticipate that he would have to wait while the police would obtain a canine for the search.

The federal courts have recognized that the causal chain of evidence obtained during a valid traffic stop that exceeds its proper scope may be broken by a valid consent to search.[29] The Eighth Circuit in *Ramos* noted that the arrest and consent were close in time, and although there were no intervening circumstances, the officer's conduct was in good faith and the violation was not flagrant. The same is true here. The Court there then concluded that the Fourth Amendment did not require suppression[30]:

---

[29] See *Ramos*, 42 F3d at 1164.
[30] *Ramos*, 42 F3d at 1164.

> [W]e hold that [defendant's] voluntarily signing the consent form was sufficiently an act of free will to purge the taint of the preceding illegal detention. Therefore, the evidence discovered by the consented-to search was not made inadmissible by the Fourth Amendment.

Likewise, here, there was no causal relationship between the additional questions asked of petitioner and petitioner's granting of consent. If so, he would also have consented to search the trunk and alleviated the police's need to obtain a search warrant.

There is no reason for this Court to reach the issue about whether a police officer may ask questions unrelated to the original purpose of the stop without particularized suspicion. There are two other bases on which to affirm. This Court should deny the petitioner's request for a writ.

RELIEF

The Petition for a writ of certiorari should be denied.

Respectfully submitted,

Michael A. Cox
Michigan Attorney General

Thomas L. Casey
Michigan Solicitor General
Counsel of Record

Eric Restuccia
Assistant Attorney General
P. O. Box 30217
Lansing, Michigan 48909
(517) 373-4875

Attorneys for Respondent

Dated: October 2005